



November 14, 2007

The Honorable Nancy Pelosi
Speaker, U.S. House of Representatives
H-232 The Capitol
Washington, D.C. 20515

Dear Speaker Pelosi:

We are writing on behalf of the members of the American Bankers Association and America's Community Bankers, regarding H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, which is scheduled for consideration by the full House on Thursday, November 15, 2007. H.R. 3915 is far-reaching legislation designed to prevent a recurrence of the problems in the subprime market that have harmed many American homebuyers.

We recognize that this legislation seeks to address the source of most of these problems, the loosely regulated and largely unexamined mortgage originators operating outside of the regulatory structure within which federally insured depository institutions function. However, we remain concerned that this major legislation may have a negative impact on both insured depository institutions and their credit-worthy customers seeking to buy homes. We have worked with the Financial Services Committee and are pleased that a number of concerns were addressed either prior to, or during, Committee consideration of the legislation.

While we greatly appreciate the comprehensive, inclusive consultation that has gone into the drafting process so far, and the desire to avoid unduly restricting credit, we remain concerned that there are areas of the bill which still, in our view, need serious work.

We plan to work with the Congress as the legislation moves forward to clarify additional areas of concern. To that end, we offer the following comments.

TITLE I

Title I of the bill requires licensing or registration for all mortgage originators. Bank employees are already subject to significant background checks, educational requirements, and examination. We remain concerned with the additional regulatory burden that could come with a registration requirement. Banks already face significant regulatory burden, and additional burden could force many banks, especially community banks, to leave the mortgage lending arena rather than face additional compliance requirements. This would in turn harm consumers who benefit from the protections that come from loans offered by regulated, insured, and examined institutions.

Title I requires background checks and registration of bank employees through their primary regulators. We believe the better alternative is for background checks to be conducted by the bank

itself, with information made available as necessary to the primary regulator. In this way the employee's privacy is better protected and the background check system would operate in a functionally similar fashion to current background check practices by banks. While the legislation endeavors to ensure that the registration and background checks utilize already existing procedures and practices, we believe that this change is needed. Title I does provide that small banks making few mortgage loans will not be unduly burdened with new requirements, and we applaud this inclusion in the bill.

We also have significant concerns that Title I contains terms which are very subjective and will likely lead to increased litigation. While many subjective terms were removed or better defined prior to Committee consideration of the bill, others, such as "abusive terms" and "excessive fees," remain. We will continue to work with Members of Congress to address these and any additional concerns in this area.

TITLE II

Title II of the bill creates minimum standards for all mortgages. These, generally, are an ability to repay the loan, and a net tangible benefit for refinanced loans. While we have some remaining concerns about a net tangible benefit standard, we recognize that the regulators are given guidance to help ensure that this standard is both meaningful and measurable. Title II also creates a safe harbor for prime mortgage loans. These loans would face few additional requirements or restrictions beyond the ability to repay/net tangible benefit standards. To ensure that new products and services can be introduced to meet credit needs in a changing and vibrant market, the included regulatory flexibility is essential, and we appreciate your efforts to include such flexibility. We believe that this language can be further refined to ensure greater consumer options as the prime market evolves. We hope to continue to work with you to further advance this approach.

While we agree that basic underwriting standards (e.g., the "ability to repay") should apply to all loans, we remain concerned about when in the loan process this standard is applied. For example, the bill requires lenders to present a borrower who is merely inquiring about a loan with a "range of products" for which the borrower may qualify. While this section does not require a full underwriting, we remain concerned that a lender could be held liable for presenting loan options to a customer based upon limited information. Another example that concerns us in this area is that in determining the ability to repay, the lender is required to factor in multiple loans to the same borrower, if the lender knows or has reason to know of the multiple loans. The "reason to know" standard is very subjective and could lead to much litigation. While it is certainly reasonable to require sound underwriting, including factoring in multiple liens against a property, lenders should not be held to an unreasonable standard of knowledge of the borrower's behavior, but instead should be held to knowledge provided by the borrower or obtained in good faith by the lender.

We remain extremely concerned with provisions in Title II regarding rental properties that fall into foreclosure. These provisions are intended to provide renters with statutory rights ensuring them time to find alternative housing. While minimization of any housing disruption to a renter is an admirable goal, these provisions likely will have the effect of decreasing the financing of rental housing. Lenders dealing with a foreclosure need to be able to turn a property over for resale as quickly as possible, both to protect the property and to minimize liability for the lender. The provisions limiting the ability of lenders to return foreclosed properties to the marketplace in a

timely fashion will likely have the result of inhibiting lenders from financing rental properties, thereby reducing the availability of affordable rental property.

TITLE III

Title III of the legislation addresses High Cost Mortgage Loans, expanding upon protections already in place under the Homeowner's Equity Protection Act (HOEPA). This section of the legislation poses a number of potential concerns for the lending industry. Although insured depositories have generally avoided making HOEPA loans, considering the reputational risk to be too high, these loans are legal and do serve a legitimate purpose. Our broad concerns are that Title III will push many more loans into the "high cost" category. Doing so will discourage many legitimate lenders from making loans to qualifying borrowers. While Title III does intend to curtail many "high cost" loans from being made, we are concerned that an unintended consequence may be a greater restriction of credit than is intended, which would harm consumers and lenders alike.

Any changes to HOEPA will require regulatory changes by the agencies, and system changes by financial institutions. Such changes will take time, as will the training of bank employees and regulatory examiners. The effective dates for Title III should be made consistent with the rest of the bill, and allow a reasonable time frame for enactment.

TITLE IV

Title IV of the legislation would establish an Office of Housing Counseling within the Department of Housing and Urban Development. We and our members have long advocated increased counseling opportunities for borrowers. The purchase of a home is the largest financial transaction most borrowers ever make. Ensuring that borrowers are well informed of the rights and responsibilities involved in a home purchase is vital to a healthy mortgage market. The creation of a coordinated office within HUD will surely help to ensure more and better counseling opportunities for borrowers.

PREEMPTION

A national standard is a vital component of any legislation affecting the mortgage markets. The bill addresses preemption only to a very limited degree. It leaves in place the holding in *Watters v. Wachovia*, but does not extend that holding to the rest of the bill – so there is no broad national standard. It does include preemption for loan securitizers to ensure that the existing national secondary market is not disrupted by the bill, but again, this preemption is limited only to securitizations. If primary lenders are to be expected to comply with the extensive new requirements of this legislation and to comply with an untold number of state laws, the regulatory burden will be immense. To ensure that the primary market can function in an efficient manner, and that an undue constriction of credit is not triggered by this bill, we strongly urge the adoption of a strong federal preemption provision. The market will adapt, but it can only do so effectively when lenders can rely on more certainty.

CONCLUSION

In conclusion, this bill is designed to establish a new regulatory structure that will result in more equitable treatment of homebuyers throughout the country in a national mortgage system involving many, disparate participants.

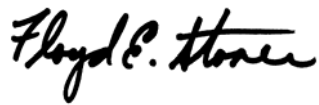
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We anticipate a number of amendments during floor consideration. As a general rule, we oppose amendments which would increase regulatory burden on banks and their employees, and support amendments which recognize the role that regulated, insured, and examined institutions play in protecting consumers' interests and in providing products and services which benefit our national marketplace.

We greatly appreciate the working relationship that has been established between the Members of the Financial Services Committee and all interested parties, and we shall continue working with Members of Congress as this legislation moves through the legislative process.

Sincerely,



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